

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board)	
On Universal Service)	
)	
Aventure Communication Technology, LLC)	
Petition for Waiver of Sections 54.307(c) and)	WC Docket No. 96-45
54.802 of the Commission's Rules)	
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**REPLY COMMENTS OF
AVENTURE COMMUNICATION TECHNOLOGY, LLC**

Aventure Communication Technology, LLC ("Aventure"), by its undersigned counsel, respectfully submits its reply comments in the above-captioned proceeding. Aventure has demonstrated that good cause exists to grant the requested waiver. Granting the requested waiver is in the public interest, because it will enable Aventure to continue to build out its network and to provide advanced voice and data services to more customers within rural and underserved areas of Iowa.

AT&T, Qwest, and Sprint have not demonstrated, and cannot demonstrate, that good cause does not exist to grant the requested waiver. Nor have these opponents distinguished, or attempted to distinguish, Aventure's petition for waiver from the other petitions for which the Commission has granted similar relief. Aventure respectfully requests that the Commission promptly grant its petition.

I. AT&T, QWEST AND SPRINT ARE BARRED BY THE DOCTRINE OF UNCLEAN HANDS FROM OPPOSING AVENTURE'S WAIVER REQUEST

Three carriers—AT&T, Qwest and Sprint—filed oppositions against Adventure's waiver petition, despite the fact that Adventure does not provide service in AT&T's and Sprint's service area, and Adventure currently does not serve any customers in Qwest's service territory. The Commission should ask why carriers with no interest in Adventure's deployment of advanced services to rural customers outside their service areas should be intervening in this proceeding. In fact, for the past two years, AT&T, Sprint, and Qwest have been in litigation with Adventure and many other small rural carriers in an ongoing dispute over access charges. Their involvement in the instant proceeding has nothing to do with the merits of Adventure's petition for waiver to correct clerical errors in its Form 525 filing. Rather, it is just the most recent step in a campaign of harassing litigation that three of the largest telecom carriers in the country are conducting against small rural carriers in their ongoing dispute over access charges.

Since October 2006, AT&T has refused to pay Adventure for the terminating access services that AT&T has taken—and continues to take—from Adventure even though this Commission and numerous federal courts repeatedly have found that such self-help violates the Act. In early 2007, Qwest and Sprint followed AT&T's lead, refusing to pay for the access services that they obtained from Adventure. A decades-long line of Commission and federal court precedent firmly establishes that parties cannot take the law into their own hands and simply refuse to pay for services they have taken from a carrier – such action constitutes unlawful self-help, and violates sections 201(b) and 203(c) of the Communications Act.¹ Rather, if a carrier

¹ See, e.g., *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999) (§ 201(b) violation); *MCI Telecommunications Corp., American Telephone and Telegraph Co. and the Pacific Telephone and Telegraph Co.*, 62 FCC 2d 703 (1976) (§ 203(c) violation).

has a dispute against a tariffed rate, it must pay that rate while pursuing a complaint before the Commission.²

AT&T, Qwest, and Sprint began their campaign of unlawful self help against Aventure in mid-2006 and 2007, as stated above. Aventure responded by filing a collection action against AT&T in federal district court for the Southern District of New York.³ AT&T countersued Aventure and numerous other parties in federal district court in Iowa, and Qwest and Sprint filed similar actions, which are expected to be consolidated with the AT&T complaint.⁴ Aventure is pursuing another collection action against Verizon (not a party to the instant proceeding) in *Aventure Communications Technology, LLC v. MCI Communication Services, Inc.*, No. 5:07-cv-04095-MWB (N.D.IA). All these cases are pending.

In this proceeding, AT&T, Qwest, and Sprint are intervening in a case in which they obviously have no interest, for the sole purpose of attempting to deny or delay Aventure's receipt of USF funding to which it is entitled pursuant to the Iowa Public Utilities Board's ("Iowa Board") grant of eligible telecommunications carrier ("ETC") status. This is a transparent attempt to starve Aventure – first by refusing to pay access charges they are lawfully obligated to pay; second, by forcing Aventure to incur significant legal costs in pursuing its collection actions; and now, by attempting to deny or delay Aventure's receipt of vitally needed USF

² See, e.g., *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2^d Cir. 1998); *MGC Communications, Inc. v. AT&T Corp.*, 15 FCC Rcd. 308 (1999). *Bell Atlantic – Delaware v. Frontier Communications Services, Inc.* 15 FCC Rcd 7475, ¶ 9 (2000) ("The proper way for an IXC to challenge a LEC's [rate] is to initiate a Section 208 [complaint] proceeding at the Commission.").

³ *Aventure Communications Technology, LLC v. AT&T Inc.*, 07 Civ. 1780 (WHP) (S.D.N.Y.).

⁴ *AT&T Corp. v. Superior Telephone Cooperative*, No. 4:07-cv-043-JEG-RAW, *Qwest Communications Corp. v. Superior Telephone Cooperative*, No. 4:07-cv-078-JEG-RAW, and *Sprint Communications Co. v. Superior Telephone Cooperative*, No. 4:07-cv-194-JEG-RAW (S.D.IA).

funding. It obviously does not matter to AT&T, Qwest, and Sprint that, by pursuing this scorched-earth, unlawful self-help campaign against Aventure, they are seeking to cripple a carrier that is attempting to bring advanced IP-based telephony and synchronous, megabit Internet access to rural users that have been abandoned by the large carriers.

Because AT&T, Qwest, and Sprint are currently conducting a campaign of unlawful self-help against Aventure, and are in current violation of sections 201(b) and 203(c), they are barred by the doctrine of unclean hands in pursuing relief against Aventure.⁵ In any event, the opposition of these three carriers is so clearly a case of retributive and harassing litigation, the Commission should summarily dismiss their filings.

II. THE COMMISSION MUST REJECT THE OPPONENTS' ATTEMPTS TO CALL AVENTURE'S ETC DESIGNATION INTO QUESTION

The oppositions by AT&T and Qwest effectively constitute attempts to call Aventure's ETC designation into question.⁶ This is not the appropriate procedural vehicle in which to challenge Aventure's ETC designation. The Iowa Board already has evaluated Aventure's qualifications to be designated as an ETC, which included the review of Aventure's detailed business plan. Based on this review, the Iowa Board determined that Aventure satisfied the criteria to be designated as an ETC. If AT&T and Qwest truly believe that Aventure does not satisfy the criteria to be designated as an ETC, then they may raise their claims before the Iowa Board. Because the relief purportedly sought by AT&T and Qwest is not available in this current venue, their pleadings are procedurally defective and should be summarily dismissed.

⁵ See, e.g., *Consolidated Aluminum Corp. v. Foseco International Ltd.*, 910 F.2d 804, 809 (Fed. Cir. 1990).

⁶ See AT&T Comments at 6; Qwest Comments at 1. Sprint apparently only seeks to prevent Aventure from receiving universal service for those lines that it provides to conference calling providers.

III. THE COMMISSION ALREADY HAS REJECTED THE ARGUMENTS RAISED IN THE AT&T, QWEST, AND SPRINT OPPOSITIONS

The Commission already has rejected the arguments upon which AT&T, Qwest, and Sprint base their oppositions to Aventure's petition. The opponents to Aventure's petition argue that the Commission must deny the petition, because, they claim, Aventure is an "access stimulator." In doing so, the opponents ignore the Commission precedent finding that carriers may assess access charges for calls made to their customers that are conference calling providers.

The Commission recently rejected the very arguments that AT&T, Qwest, and Sprint make in their oppositions to Aventure's waiver request. In *Qwest v. Farmers & Merchants Mutual Telephone Company*, Qwest filed a formal complaint against a rural telephone company, asking the Commission to find that business arrangements between LECs and conference and chat providers to generate access traffic and access revenues were unlawful. The Commission rejected Qwest's arguments, finding, "Farmers did not violate Sections 203 or 201(b) of the Act by imposing terminating access charges on traffic bound for conference calling companies."⁷ The Commission also found that "Farmers' payment of marketing fees to the conference calling companies does not affect their status as customers, and thus end users, for purposes of Farmers' tariff...."⁸ Moreover, between 2001 and 2002, the Commission issued three additional orders that rejected formal complaints brought by AT&T against rural LECs that provided conference and chat services.⁹

⁷ *Qwest v. Farmers & Merchants Mutual Telephone Company*, 22 FCC Rcd 17973, para. 30 (2007).

⁸ *Id.* at para. 38.

⁹ *AT&T Corp. v. Jefferson Telephone Co.*, 16 FCC Rcd 16130 (2001); *AT&T Corp. v. Frontier Communications of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T v. Beehive Telephone Co.*, 17 FCC Rcd 11641 (2002).

This proceeding solely is about Aventure's request that the Commission waive the deadline in which it had to submit its FCC Form 525 (line count information) so as to permit Aventure to correct clerical errors in its filing and to receive universal service support for a particular quarter. The four Commission rulings discussed above make clear that, even if the arguments made by AT&T, Qwest and Sprint in the instant case were relevant—and they are not—they are without merit, and cannot provide a basis for denying the waiver Aventure seeks.

IV. GOOD CAUSE EXISTS TO GRANT THE REQUESTED WAIVER

Not a single opponent addressed applicable Commission precedent, which supports granting the requested waiver. Despite the opponents' attempts to misdirect the Commission's attention, there is only one narrow issue in this proceeding: whether Aventure has demonstrated good cause for granting the requested waiver of the deadline in which to file the line count data (FCC Form 525). As Aventure stated in its petition, in both *Cellular South* and *Verizon*,¹⁰ the Commission granted petitions for waivers of filing deadlines when the petitioners acted swiftly to correct their errors and instituted remedial measures to prevent subsequent errors and omissions in filing requirements.¹¹ Aventure already has demonstrated that it missed the filing by an extremely short period of time (less than two weeks), and that it took action immediately to remedy the mistake. Aventure also stated that it has implemented additional company procedures to ensure that the company does not subsequently miss a filing deadline.¹² AT&T, Qwest and Sprint do not even attempt to distinguish Aventure's petition from similar waiver

¹⁰ See *Federal-State Joint Board on Universal Service, Cellular South Licenses, Inc., Petition for Waiver of Section 54.802(a) of the Commission's Rules*, 21 FCC Rcd 9605 (2006); *Federal-State Joint Board on Universal Service, Verizon Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, 21 FCC Rcd 10155 (2006).

¹¹ See Aventure Petition at 3-5 (citations omitted).

¹² *Id.* at 5-6.

petitions that the Commission already has granted, nor have they questioned the corrective actions that Aventure has instituted.¹³ Therefore, consistent with existing Commission precedent, the Commission should grant the requested waiver.

Moreover, the receipt of universal service funds will enable Aventure to continue to build out its network and to reach a greater number of consumers, all which are located in rural and underserved Iowa. The Iowa Board granted Aventure's ETC petition in March 2006, just over two years ago, and Aventure began providing service shortly thereafter. At just two years in service, Aventure is still a startup, and is actively building out its networks. Aventure has used—and will continue to use—the universal service funding that it has received to build out its network so that it can reach customers—both business and residential—in other rural communities in Iowa.¹⁴ It is only with continued universal service support that Aventure, a new operator offering service in rural and underserved areas in Iowa, can continue to provide and expand its offerings.

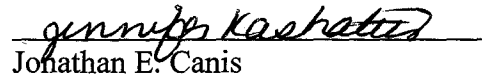
¹³ See *id.* at 3-5 (citing *Federal-State Joint Board on Universal Service, Cellular South Licenses, Inc., Petition for Waiver of Section 54.802(a) of the Commission's Rules*, 21 FCC Rcd 9605 (2006); *Federal-State Joint Board on Universal Service, Verizon Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, 21 FCC Rcd 10155 (2006)).

¹⁴ In a recent *ex parte* presentation to the Commission Staff, Aventure provided a copy of its advertisement announcing its telephone and broadband services to *residential and business* customers in certain locations in Iowa. See Letter to Marlene Dortch, Secretary, FCC, from Jennifer Kashatus & Jonathan Canis, Counsel to Aventure, Attachment (Mar. 4, 2008).

V. CONCLUSION

For the foregoing reasons and as stated in its petition, Aventure respectfully requests that the Commission grant its petition for waiver.

Respectfully submitted,



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